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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 060282.00103

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Application Number	Filed
10/677,751	October 3, 2003

First Named Inventor: Ivan Laloux Sbida

Art Unit	Examiner
2416	Mon Cheri S. Davenport

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 62,382
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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Telephone number

February 2, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

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FEB 02 2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Ivan Laloux SBIDA

Art Unit: 2616

Application No.: 10/677,751

Examiner: Mon Cheri S. Davenport

Filed: October 3, 2003

Attorney Dkt. No.: 060282.00103

For: METHOD, SYSTEM AND NETWORK ELEMENT FOR DATA TRANSMISSION USING A TRANSITION MECHANISM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

February 2, 2009

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-7, 9, 11, 13, 25-31, 33, 35, 38-40, and 43-47 in the above identified application. Claims 1-7, 9, 11, 13, 25-31, 33, 35, 38-40, and 43-47 were finally rejected in the Office Action dated October 2, 2008 (the Final Office Action incorrectly characterized the claims as "claims 1-7, 9, 11, 13, 25-31, 33, 35, 37, and 46-47"). Applicants filed a Response to the Final Office Action on January 2, 2009, and the Office issued an Advisory Action dated January 29, 2009, withdrawing the final rejection of claim 47 under 35 U.S.C. § 112, first paragraph, but maintaining the final rejection of claims 1-7, 9, 11, 13, 25-31, 33, 35, 38-40, and 43-47 under 35 U.S.C. § 102(e). Applicants hereby appeal this rejection and submit this Pre-Appeal Brief Request for Review.

The Final Office Action rejected claims 1-7, 9, 11, 13, 25-31, 33, 35, 38-40, and 43-47 under 35 U.S.C. § 102(e) as allegedly being anticipated by Dunk (U.S. Publication No. 2004/0264465) ("Dunk"). Applicants submit that there is clear error due to a lack of anticipation of at least one element of independent claims 1, 13, 25, 38, and 45-47, upon which claims 2-7, 9, 11, 26-31, 33, 35, 39-40, and 43-44 are dependent.

Applicants respectfully submit that the present claims recite subject matter which is neither disclosed nor suggested by Dunk, and that, therefore, the final rejections are clearly improper and without basis. Specifically, Dunk fails to disclose, or suggest, at least, "*activating, by using a packet based data transmission protocol context, a communication connection based on a communication protocol of a first type from a user equipment to a network support node of a communication network*," "*allocating, by the network support node, a first connection information part comprising a first address related to the communication protocol of the first type to the communication connection of the user equipment*," "*allocating, by the network support node, and based on a transition mechanism used by the communication network, a second connection information part comprising a second address related to the communication protocol of a second type to the communication connection of the user equipment*," and "*tunneling, with the network service node being a tunnel end-point, the data transmission based on the communication protocol of the first type between the user equipment and the another node using a connection based on the communication protocol of the second type*," as recited in independent claim 1.

Certain embodiments of the claimed invention are related to a situation where a first communication protocol type user equipment, which communicates using a first communication protocol type, is in a communication network controlled by a network support node, which communicates using a second communication protocol type. According to such embodiments of the claimed invention, a transition mechanism, used by the communication network, allows the user equipment to communicate as if it is connected to a communication network which communicates using a first communication protocol type, rather than the second communication protocol type. In other words, the user equipment need not know that the communication network actually communicates using a second communication protocol type as the transition mechanism is transparent to the user equipment. Applicants respectfully submit that this is reflected in the aforementioned limitations of independent claim 1.

The general conventional approach is a transition mechanism where the user equipment performs encapsulation/decapsulation so that a user equipment, which communicates using a first communication protocol type, may communicate in a communication network that uses a second communication protocol type. This is known as ISATAP functionality, and requires

processing capacity in the user equipment to perform the required encapsulation/decapsulation. However, as discussed above, embodiments of the claim invention allow the transition mechanism to be transparent to the user equipment, as the transition mechanism is used by the communication network. As will be discussed in more detail, Dunk discloses no more than the general prior art, as Dunk merely teaches encapsulation/decapsulation performed by the user equipment.

Dunk discloses two separate embodiments, with the first embodiment illustrated in Figure 1, and the second embodiment illustrated in Figure 4. (See Dunk at Figures 1 and 4). The first embodiment of Dunk is directed towards a front end of a serving network (*i.e.*, a host computer's entry point and connection to the serving network), while the second embodiment of Dunk is directed towards a back end of the serving network (i.e. the exit point from the serving network to a wireless communication device). Specifically, in the first embodiment (*i.e.* the "front end" embodiment), Dunk discusses an IPv6 wireless communication device which is connected to an IPv6 communication network, and an IPv4 host which is connected to an IPv4 host network, where the IPv6 communication network is also connected to the IPv4 host network. (See Dunk at paragraphs 0023-0024 and Figure 1). Furthermore, in the second embodiment (*i.e.* the "back end" embodiment), Dunk discloses an IPv6 wireless network with an IPv6 user equipment, and IPv4 wireless network with an IPv4 user equipment, a host, a host access network, and a core serving network. (See Dunk at paragraphs 0059-0063; Figure 4).

With respect to the "front end" embodiment, as Dunk discloses an IPv6 wireless communication device connected to an IPv6 communication network, Dunk fails to teach IPv6-in-IPV4 tunneling at the wireless communication device connection side (i.e. at the interface between the core serving network 128 and the device 130), since both are communicating via the IPv6. Instead, the transition is done at the other end of the system, i.e. the interface to an IPv4 host using host network 110.

With respect to the "back end" embodiment, as discussed above, this embodiment only teaches a transitions mechanism where the wireless communication device performs encapsulation/decapsulation. Specifically, a router 430 receives the data packets addressed to a temporary IPv6 address. The router 430 encapsulates these data packets with the temporary IPv4 address of the wireless communication device. The router 430 subsequently sends the

encapsulated data packets over the IPv4 wireless network 432. The wireless device 408 receives the data packets addresses to its temporary IPv4 address and process the information contained therein. (See Dunk at paragraph 0081). As discussed above, this is distinct from a transition mechanism, used by the communication network, which allows the user equipment to communicate as if it is connected to a communication network which communicates using a first communication protocol type, rather than the second communication protocol type, as the wireless communication device is required to perform encapsulation/decapsulation. Therefore, Dunk fails to disclose, or suggest, the aforementioned limitations of independent claim 1.

In response to Applicants' arguments, the Advisory Action alleged that Dunk teaches the router 430 identifies or determines a IPv6 address for the wireless device based on the IPv4 address of the wireless device, the new IPv6 address has the IPv4 address embedded within it, that tunneling is done based on the IPv4 address type of the first network to the user equipment of the IPv6 second type using the embedded IPv4 address. (See Advisory Action at pages 2-3). Applicants respectfully submit that the encapsulation of data packets with the temporary IPv4 address of the wireless communication device, performed by the router 430 does not meet the aforementioned limitations of independent claim 1 because Dunk merely discloses a transition mechanism where the user equipment performs encapsulation/decapsulation so that a user equipment, which communicates using a first communication protocol type, may communicate in a communication network that uses a second communication protocol type. In contrast, embodiments of the claim invention allow the transition mechanism to be transparent to the user equipment, as the transition mechanism is used by the communication network.

Finally, while each of the claims of the present application have their own scope, Applicants respectfully submit that the above arguments also apply to independent claims 13, 25, 38, and 45-47. Therefore, for at least the reasons discussed above, Dunk fails to disclose, teach, or suggest, all of the elements of independent claims 1, 13, 25, 38, and 45-47. For the reasons stated above, Applicants respectfully request that this rejection be withdrawn.

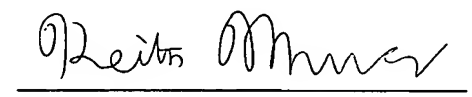
In view of the above, Applicants respectfully assert that Dunk does not disclose, teach, or suggest all of the limitations of independent claims 1, 13, 25, 38, and 45-47, and that, therefore, the final rejection is improper and without basis. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the § 102(e) rejection.

Applicants submit that claims 2-7, 9, 11, 26-31, 33, 35, 39-40, and 43-44 depend upon independent claims 1 and 25, respectively. Thus, claims 2-7, 9, 11, 26-31, 33, 35, 39-40, and 43-44 should be found allowable for at least their dependence upon independent claims 1 and 25, respectively, and for the specific limitations recited therein.

For at least the reasons discussed above, Applicants respectfully submit that the present claims recite subject matter which is neither disclosed nor suggested by Dunk, and that, therefore, the final rejection is clearly improper and without basis. It is therefore respectfully requested that all of claims 1-7, 9, 11, 13, 25-31, 33, 35, 38-40, and 43-47 be allowed, and this application passed to issue.

Reconsideration and withdrawal of the rejection, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosures: PTO/SB/33 Form
Notice of Appeal
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